

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
RICHARD A. TRIFIRO) Account Number: SA UT 84-101042
Case ID 434167
Petitioner) Carmichael, Sacramento County

Nature of Transaction: Purchaser of a motorhome

Date of Purchase: 10/7/04

<u>Item</u>	<u>Disputed Amount</u>
Purchase of motor home	\$152,698
	<u>Tax</u>
As determined and protested	<u>\$11,833.00</u>
Proposed tax redetermination	\$11,833.00
Interest (tax paid in full 5/30/08)	<u>3,786.64</u>
Total tax and interest	\$15,619.64
Payment	<u>-11,833.00</u>
Balance due	<u>\$ 3,786.64</u>

UNRESOLVED ISSUES

Issue 1: Whether the determination was timely issued to petitioner. We conclude it was.

On September 24, 2004, petitioner entered into a purchase contract with TPD California Trailers, Inc. to purchase a 2005 Renegade motorhome for \$152,697.50. At that time, petitioner provided the seller with a signed statement that the vehicle was being purchased for use outside California. On October 7, 2004, petitioner took delivery of the vehicle at the manufacturer's location in Bristol, Indiana. Two weeks later, on October 22, 2004, petitioner registered the vehicle with the Department of Motor Vehicles (DMV), but no use tax was remitted upon registration.

On April 19, 2007, the Sales and Use Tax Department (Department) requested that petitioner file a return to report the purchase of the vehicle and to pay the use tax or claim an exemption or exclusion for the purchase. Petitioner did not comply with the Department's request; therefore, on December 12, 2007, the Department issued a determination to petitioner for use tax measured by the

1 purchase price of the vehicle. Petitioner contends that the determination was not timely issued.
2 Petitioner argues that he purchased the vehicle on September 24, 2004 (when he signed the purchase
3 contract), and thus the three-year statute of limitations expired on September 24, 2007, two months
4 prior to the issuance of the determination.

5 Revenue and Taxation Code section 6010, subdivision (a), defines a “purchase” to mean and
6 include any transfer of title or possession of tangible personal property for a consideration. “Unless
7 explicitly agreed that title is to pass at a prior time, the sale occurs at the time and place at which the
8 retailer completes his performance with reference to the physical delivery of the property, even though
9 a document of title is to be delivered at a different time or place.” (Cal. Code Regs., tit. 18, § 1628,
10 subd. (b)(3)(D); see also Cal. U. Com. Code, § 2401, subd. (2).)

11 Here, since there was no explicit title provision that passed title to a specifically identified
12 vehicle to petitioner prior to delivery, title passed to petitioner on October 7, 2004, when petitioner
13 accepted delivery of the vehicle in Indiana and, therefore, the purchase took place out of state on
14 October 7, 2004. Even more important, however, is that the vehicle was apparently not in California at
15 the time petitioner contracted to purchase it, and thus, even if the purchase had occurred in September
16 2004, petitioner would not have incurred California use tax until the vehicle entered California. That
17 apparently occurred between the actual date of purchase on October 7, 2004, and the October 22, 2004
18 date of registration. Since that date occurred within the fourth quarter 2004, the tax was due by the end
19 of the month following that quarter, that is, by January 31, 2005. Thus, the Department had until three
20 years later to issue the determination, that is, by January 31, 2008. Accordingly, we find that the
21 determination issued on December 12, 2007, was timely issued to petitioner.

22 **Issue 2:** Whether the vehicle was purchased for use in California. We conclude it was.

23 Petitioner contends that use tax does not apply because he purchased the vehicle for use outside
24 California. Petitioner claims that he used the vehicle outside California for at least three months
25 between October 2004 and April 2005, and that the vehicle was out of state for more than eight months
26 after it was brought into California. Petitioner argues that he intended to keep the vehicle outside
27 California for use during vacations, and the only reason he brought it back to California was to have it
28 repaired. Petitioner provided the Department with documents allegedly supporting his claim.

1 Petitioner contends that he shredded his receipts from the out-of-state trips after keeping them for a
2 few years based on oral advice from a Board employee.¹

3 The Department asserts that since petitioner brought the vehicle back into California within 90
4 days of purchase, petitioner must show that the vehicle was located outside California one-half or more
5 of the time during the six-month period immediately following the vehicle's first entry into California
6 to avoid the use tax. Based on the documentation provided, the Department determined that the
7 vehicle was located inside California for 158 days during the six months immediately after the
8 vehicle's entry into California, or about 86 percent of the time during the test period.

9 It is undisputed that petitioner brought the vehicle into California within 90 days of purchase.
10 Based on the available evidence, petitioner has not shown that the vehicle was outside California for
11 one-half or more of the time during the six-month test period. Rather, the evidence shows that the
12 vehicle was in California for about 86 percent of that time. Thus, we conclude that petitioner has
13 failed to rebut the presumption that the vehicle was purchased for use in California. (Cal. Code Regs.,
14 tit. 18, § 1620, subd. (b)(4).)

15 Petitioner's argument that he intended to keep the vehicle outside California for use during
16 vacations is irrelevant. Petitioner was a California resident and registered the vehicle with DMV two
17 weeks after purchase. Petitioner used the vehicle on several trips in and around California during the
18 six-month test period, and the available evidence shows that the vehicle was inside California most of
19 the time during the test period. We therefore conclude he purchased the vehicle for use in this state.

20 **OTHER DEVELOPMENTS**

21 None.

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23 Summary prepared by John K. Chan, Business Taxes Specialist I
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25 ¹ The Department asked petitioner to pay use tax or claim an exemption about two and one-half years after he took delivery
26 of the vehicle, and issued a determination to him just over three years after delivery. Either of these events surely would
27 have been sufficient to alert petitioner to retain any documentation in his possession that could establish an exemption or
28 exclusion from tax, and were within the "few years" he asserts/concedes he was advised to retain the documentation. In
any event, without regard to the oral advice petitioner alleges he received, he was given written advice in the form
BOE-448 he signed on October 7, 2004, which specifically advises of the need to retain all documentation relating to the
first six months of ownership to confirm where the vehicle was located during that period.